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Supreme Court, U.S.
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No._____

IN THE

Supreme Court of the United States

Cheryl E. Hill,

Petitioner,

V.

Fort Bend Independent School District,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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Petition for a Writ of Certiorari

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7 cpp

QUESTIONS PRESENTED

1. Whether in holding that the record contained insufficient evidence to sustain the jury's verdict, the courts below misapplied the standard of review dictated disregarding and excluding evidence in the light most favorable to the nonmoving party supporting the employee's prima facie case on all claims (race, age, retaliation and hostile working environment via harassing, disparate treatment) and undermining employer's nondiscriminatory explanation.
2. Whether the courts below abused their discretion by ignoring the employee's violation of Federal Rule of Civil Procedure 37 which impeded/undermined the employee's opportunity to produce the comparative to show the gross disparity between her qualifications and those persons promoted over her.
3. Whether the courts below applied a standard too ridged and inappropriate to determine that the occurrence of a Title VII violation continuing into the charge filing period remain actionable; when viewed in context of the totality of the employee's with the employer, it is apparent that they are note discrete or isolated, but part of a series or pattern of discrimination.

PARTIES TO THE PROCEEDING

The following individuals and entities are parties to the proceeding in the court below:

Cheryl E. Hill, Plaintiff – Appellant

Fort Bend Independent School District, Defendant – Appellee

CORPORATE DISCLOSURE STATEMENT

No parties are corporations. Sup. Ct. R. 29.6

TABLE OF CONTENTS

Questions Presented.....i

Parties to the Proceeding.....ii

Corporate Disclosure Statement.....ii

Table of Contents.....iii

Table of Authorities.....iv-vi

Opinions Below.....1

Jurisdictions.....1

Constitutional and Statutory Provisions Involved.....1

Statement of the Case.....2-9

Reasons for Granting the Petition.....9-19

Conclusion-.....20

Appendix- Opinion from the Court of Appeals for the Fifth Circuit

Appendix- Final Summary Judgment, Memorandum and Order from the District Court of the Southern District of Texas, Houston Division

Appendix-Petition for Rehearsing En Blanc,, Denied by Court of Appeals for the Fifth Circuit

TABLE OF AUTHORITIES

Cases **Pages**

Albemarle paper Co. v. Moody, 122 U.S. 105, 412-413 (1975).....15

Anderson v. Reno 190 F.3d 930, 936 (9th Cir. 1999).....10

Blow v. San Antonio, 236 F.3d 293, 296(5th Cir. 2001) 13, 15

Burlington Indus., Inc. v. Ellerth, 524 U.S. 742 (1998).....17

Draper v. Coeur Rochester, Inc. 147 F 3d 1104, 117 (9th Cir. 1998).....10, 16

Evans v. City of Bishop, 238 F 3d 586, 589 (5th Cir. 2000) 16

Evans v. City of Houston, 246 F.3d 344, 352 (5th Cir. 2001) 16

Faragher V. City of Boca Raton, 524, U.S. 775 (1998) 17

Fielder v. UAL Corp., 218 F.3d 973 (9th Cir. 2000) Petition for cert pending. No.00-1397 (filed Mar. 7, 2001 10,16

Fierros V. Texas Department of Health 00-51212 (5th Cir. 2001).....14, 16

Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978) 14, 16

Long v. Eastfield Coll., 88 F.3d 300, 304 (5th Cir. 1996) 16

McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973).....13, 14

Morgan v. National Railroad Passenger Corporation 99-15374 (9th Cir. 2000).....17

Portis V. First Nat'l, 34 F.3d 325, 328 (5th Cir. 1994).....14, 16

Reeves v. Sanderson Plumbing Prods, Inc., 530 U.S. 133, 150(2000).....13, 15

Teamsters v. United States, 431 U.S. 324 (1997) 14

Trans World Airline, Inc. v. Thurston, 469 U.S. 111, 121 (1985).....13

Vance v. United Planters Corp., 209 F.3d 438, 442 (5th Cir. 2000).....16

Statues and Regulation

Civil Rights Act of 1964, Pub. L. No. 88-352, Title VII, 78 Stat. 253 (42 U.S.C. 2000e et seq.).....9, 12, 15

42 U.S.C. S 2000e-3(a)(199).....9, 12, 15

42 U.S.C. S 2000e-2(a).....9, 12, 15

42 U.S.C. S 2000e-2(a)(l).....9
Civil Rights Act of 1991, Pub. L. No. 102-166

Federal Rules of Civil Procedure

Rule37a, b, (3).....17
Rule50, 56.....13, 15

Other Authorities

Unites States Constitution.....12
Amendment XIV

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully pray that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case. Because the Petitioner was denied the opportunity for her case to be taken to the jury on her Title VII claims.

OPINIONS BELOW

The opinion of the United States Court of Appeals Appears at Appendix A to the petition and is unpublished. The opinion of the United States District Court appears at Appendix B to the petition and is not yet reported.

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on September 26, 2001. A timely petition for rehearing was denied by the United States Court of Appeals on October 31, 2001.
This jurisdiction of this Court is invoked under 28 U.S.C. S 1254 (1).

CONSTITUTIONAL PROVISIONS AND STATUES INVOLVED

The United States Constitution provides: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws." U.S. Const. Amend..XIV, S.1.

STATEMENTS OF THE CASE

Cheryl Elizabeth Hill, an African American female, began her teaching career in 1970 with a Bachelor of Science degree in Elementary Education with a concentration in History from the District of Columbia Teachers College, now known as the University of the D.C. in Washington, D.C. She obtained a Master of Arts degree in Education with a concentration in Early Childhood from the University of Texas in 1976; she alleges in this law suit that, since 1988, the Fort Bend Ind. Sch. Dist., refused/failed to promote her; other claims included in her discrimination lawsuit are retaliation, harassing-hostile working environment via disparate treatment and the petitioner raised the embedded issue of gender generated by the respondent's initial response statement to the EEOC and inference embodied within the respondent's projected nondiscriminatory explanation as to why the respondent failed/refused to promote the petitioner. After completing her administrative credentials/certification (post-graduate degree course work equating almost a second Master's Degree at Prairie View A & M University in 1988; she submitted coursework and passing test results to the Texas Education Agency); the petitioner began applying for administrative positions in the Fort Bend Ind. Sch. Dist. in 1988. In 1989, the petitioner accepted a teaching position with the Fort Bend Ind. Sch. Dist. In hopes of increasing her chances for promotional opportunity.

The petitioner continued to apply for administrative position; but, she was still continuously denied the opportunity for promotional advancement prior to 1998, and, after, she attempted to seek answers through internal redress via verbal and written inquiries as to "why" she was continuing to be overlooked for promotional opportunities while others

who were less experienced, less qualified, holding less credentials were promoted over her. Fort Bend's verbal reply to the petitioner's verbal inquiries were meet with some verbal variance that did not equate a legitimate response congruent to really hiring the best applicant and most qualified for the position. The written inquiries whereby she tried to seek answers through internal redress for the petitioner were never granted/responded to by the Fort Bent Ind. Sch. Dist.; the petitioner found herself in a precarious situation, in trying to discern, is she was, indeed, a victim of discrimination in the earlier stages of her denied promotional opportunity; even though, the persons promoted over her were mostly White, but there were in some instances a few splattering of Blacks who were known to "Amy Coleman" and who were given the nod of approval by, the, Black Human Resource Director, Amy Coleman, to Fort Bend's **all White** ultimate decision makers in the Fort Bend Ind. Sch. Dist.

Moreover, Fort Bend Ind. Sch. Dist. Had become astute and adept in concealing discrimination and, on paper, Fort Bend Ind. Sch. Could make it appear and give persuasive statistics that Fort Bend Ind. Sch. Were promoting Blacks into administrative positions comparable to Whites, but what the statistics failed to disclose is that the Blacks being promoted in Fort Bend Ind. Sch. Dist. Were concentrated in black schools/geographical areas in Fort Bend Ind. Sch. Dist. The Fort Bend Ind. Sch. Dist.'s practice of au ju segregation impacted this disparate impact, but in paper, it is difficult to discern. The petitioner had foreshadowed this concern with the courts below in explaining her reluctance to go forward with an EEOC complaint due to the fact that she was aware that Fort Bend Sch. Dist. Ahd cultivated the art of concealing discrimination to a fine tooth science and offering up statistics based upon segregated data of Black schools rather than

holistic data which belied the truth. The Blacks schools are concentrated in area 1 and the White schools are concentrated in areas 2 and 3 of the Fort Bend Ind. Sch. Dist. The majority of the Blacks promoted are cluster/concentrated in one area which leaves the other two areas almost completely White. The petitioner created maps/**charts** displaying this disparate impact, but the courts below ignored and excluded this direct information available in the record. The record contains a direct statement in the petitioner's affidavit quoted from Amy Coleman signaling the truth of the matter concerning promotions of Blacks—On one of those occasions when the petitioner questioned why she had not gotten an assistant principal's position in what happened to be at one of the schools in the White areas. Mrs. Amy Coleman said, "Cheryl, these White folks are not going to hire you in these White schools." The petitioner's opportunity for promotional opportunity continued to be denied and further suppressed by another discriminatory pattern and practice which emerged around 1995 called the "Cohort Classes" controlled and headed by Fort Bend Ind. Sch. Dist.'s Superintendent, Don Hooper, White, and Betty Baitland, also white, both taught and mentored their majority young and White students who were beginning graduate study and working toward their Masters at the University of Houston; the students in these Fort Bend's Superintendent classes were being prepared as a pool of applicants in which to pull from as administrative positions became available, in other words, they were already pre-destined for promotional positions/opportunity in the Fort Bend Ind. Sch. Dist.

Around 1995 or 1996, the petitioner was told via direct statement by her former Black principal, Raymond Whitley that a "blank reference form" was in her personnel file which was sent in 1994, by another former principal of the petitioner who happened to be White, Dianne McDonald.

Raymond Whitley warned the petitioner that as long as the blank reference form remained in her file; it would continue to give a "negative" silent coded message. Mr. Whitley also made direct statements to the petitioner concerning the fact that he was sharing this with the petitioner in strictest confidence and sticking his neck out because the staff attorney Bernadette Gonzales for Fort Bend Ind. Sch. Dist. Made person who sat on applicant screening and/or hiring committees sign affidavits that they would not discuss what had transpired in making their decisions about the screening and hiring of applicants. Such a practice seems suspicious and seems not to reflect an open and honest practice. Mr. Whitley had been on a screening committee for vacancies for assistant principals in 1994, and he said the persons on the committee were very impressed with the petitioner's qualifications and credentials, but the "blank reference form" sent in by Dianne McDonald made the committee decide not to grant the petitioner an interview. Mr. Whitley tried to convince them to interview the petitioner, but they remained steadfast because they had all been schooled on the meaning of the "blank reference form" as told to the petitioner by Raymond Whitley. Dr. James Rueter, a former Superintendent for Elementary schools, advised administrators how **not** to write down anything negative to avoid legal repercussions; he advised administrators, "When you do not want to give an applicant a good reference, send the reference in blank and a negative message will be given silently." Dianne McDonald not been a successful principal at her former school, Briargate, a predominately Black school; and, the parents wanted her out because the school was not performing well. Dianne McDonald was placed at the petitioner's school, Blue Ridge, when the principal, Clem Boulte retired. Blue Ridge had a mixture of minority and/or disadvantaged students, poor blacks, poor browns, and poor white. The petitioner had a differing opinion about the

best reading philosophy and strategies that work best to bring about the ultimate success for, particularly poor, and/or disadvantaged children who are most often minority children, Black and/or Brown and who may even by second language speakers in English. The strategies utilized for the petitioner's students brought about fantastic results, but Mrs. McDonald insisted that the petitioner not utilize her strategies. Petitioner tried to reason with Mrs. McDonald by describing student success; "Mrs. McDonald said, 'I don't care about how much success you are having. This is my school and I don't want it!'" Mrs. McDonald begun to harass the petitioner if she thought the petitioner was teaching reading in the manner that brought most success for students. McDonald would follow the petitioner around with a notepad to ensure that the petitioner not use the successful techniques that worked so well with these students. The petitioner's job as teacher specialist was phased out at that school, and based upon the hostile environment, the petitioner felt compelled to transfer from that setting.

The petitioner transferred to Townewest as an English as a Second Language Teacher K-5. The petitioner continued to apply for and was denied continuously the opportunity for administrative advancement positions. The petitioner continued to see countless individuals with less experience, knowledge, and credentials/qualifications promoted over her. In 1996, Vicki Johnston, a younger White female from the Superintendent's Cohort Classes" was promoted to the assistant principal's position that had become vacant at the petitioner's school, Townewest. The petitioner's school Townewest was located in area 3, a White area, of the Fort Bend Ind. Sch. Vicki Johnson was still taking classes and had not completed her administrative coursework; she had no knowledge or experience with ESL-English as a Second Language or children of poverty, yet in 1996, she became

the assistant principal at Townewest. Johnston instigated a rein of tyrannical harassing, retaliatory, disparate treatment in constant search of impropriety in the petitioner's instructional management of the ESL/English as a Second Language Program that **was already successful.** It was a mind boggling experience because Mr. Cecil Tielke, the Principal joined in with Vicki; Mr. Tielke had never treated the petitioner in a singling out disrespectful/disparate manner as if he did not trust the petitioner's professionalism, or instructional judgment, or how the petitioner scheduled students in the ESL Program based upon their language instructional needs. Vicki brought a bullying-type-disrespectful management style to Townewest and the petitioner was singled out for intense scrutiny, disparate, and harsher treatment. Vicki began purporting, disparately and without merit in memorandum format that the petitioner was abusing sick and personal business days, being tardy in excess of three times, and violating policy concerning reporting absences; Mr. Tielke supported Vicki Johnston in her accusation even though prior to Vicki coming to Townewest, Mr. Tielke had never engaged in this type of disparate treatment without merit toward the petitioner. Mr. Tielke, himself, seemed fearful of Vicki Johnston. Moreover, in a bullying style, Vicki even accosted the petitioner in the library the day before the Thanksgiving holiday was to begin; Vicki Johnston stood over the petitioner, and boomed out in a loud, disrespectful voice. Mrs. Hill, "Why aren't you servicing you students?" The regular classroom teacher had requested that the petitioner not come to her class on that day because the third grade classes were having their traditional harvest feast with parents as invited guests so the petitioner used that time in the library working on her lesson plans and gathering books to be used for upcoming lessons. There were other teachers who were also teacher specilist who wre doing likewise as the petitioner, but they were not singled out and

treated in the sane manner as untrustworthy, and needing to be checked upon, and being talked to in a disrespectful, demeaning manner as was the petitioner. Soon after, Mr. Tielke stepped down as principal and took an assistant principal's job at another school. Vicki Johnston became principal and hired 26 year-old Dedrick Martin, African American, as her assistant principal in 1999; he was from the Superintendent's Cohort Classes, and, he too, had not completed his administrative coursework or his Master's degree. He had no regular teaching experience; his experience had only been in special education, and he had barely completed a little over 2 years of teaching. Vicki made a direct statement to team leaders that she fired Martin because he was "moldable" The petitioner, in considering Mr. Martin's **very young age concluded, moldable equated an age preference remark made by Vicki Johnston.**

The petitioner filed an EEOC Complaint in January 1999; the EEOC complaint was certified in April 1999. After the Petitioner filed an EEOC Complaint, she filed her lawsuit in district court, and within a few days before the petitioner was due to go to before a judge in federal district court to obtain the scheduling order from the judge, the petitioner was subjected to a "disciplinary counseling session," followed by a written reprimand accusing her without merit of not properly serving students in her ESL/English as a Second Language class by Mr. Martin who gave the petitioner a lowered evaluation in a particular area to indicate **without merit** that the petitioner did not get along with her fellow coworkers on the job, and he wrote additional negative comments on the petitioner's evaluation. In the 30 years that the petitioner had taught, she had never received an evaluation lowered in any section or area and written reprimand purporting and accusing her of professional irresponsibility or professional impropriety. The pretext

reason that the courts below have accepted as a legitimate nondiscriminatory reason for why the respondent failed/refused to promote the petitioner is not documented on any of the petitioner evaluations throughout the years **with the exception** of Mr. Martin's without merit lowered evaluation that occurred **after the petitioner engaged in protected activity.**

The Court of Appeals conceded that the petitioner met her burden on all four prongs for having made a prima facie case on race and age as determined by the McDonnell Douglas Test, but discrimination claims on retaliation and harassing hostile work environment were denied, and the embedded gender issue was not addressed at all. The excluding and ignoring of the petitioner's direct and circumstantial evidence in the record by the courts below and by their not viewing the record as dictate by Rule 50 in the light most favorable to the nonmoving party; and by their additional credence to what they believe to be a nondiscriminatory explanation for the respondent's failure/refusal to promote the petitioner, the United States Court of Appeals for the Fifth Circuit affirmed the district's court summary judgment against the petitioner.

REASONS FOR GRANTING THE PETITION

The first reason **this Court should grant this petition is** because the courts below erred by excluding the petitioner's Title VII discrimination claims prior to June 10, 1998. Before a suit may be filed under Title VII, a plaintiff must file a complaint to the EEOC within 180 or 300 days. See U.S.C. s 200e-5(e)(1). Title VII"s limitation period liability to conduct occurring within the applicable limitations period; the continuing violations doctrine, however, allows courts to consider conduct that would ordinarily be time barred "as long as the untimely incidents represent an ongoing unlawful

employment practice." Anderson v. Reno, 190 F.3d 930, 936 (9th Cir. 1999); see e.g.. Draper v. Coeur Rochester, Inc., 147 F.3d 1104, 1107 (9th Cir. 1998). The Ninth Circuit has never adopted a strict notice requirement as the litmus test for application of the continuing violation doctrine; in fact, in Fiedler v. UAL Corp., 218 F.3d 973 (9th Cir. 2000), according to Fielder, a plaintiff can establish a continuing violation in one of two ways. First, by showing a series of related acts one or more of which are within the limitations period – a serial violation. A serial violation is established if the evidence indicates that the alleged acts of discrimination occurring prior to the limitations period are sufficiently related to those occurring within the limitations period. The second way to establish a continuing violation is to show a systematic policy, or practice of discrimination that operated, in part, within the limitations period – a systemic violation. Systemic or practice" and most often occur in matters of placement or promotion (repeated denial of a promotion). The petitioner's Title VII claims repeated failure to promote, retaliation, harassing hostile environment via disparate treatment were actionable as continuing violations determined by both serial and systematic type continuing violation; the courts below erred by misapplying a legal standard too rigorous to determine the Plaintiff's claims prior to June10, 1998 equating the occurrence of the Continuing Violation Doctrine exhibited by the respondent's continuing failure/refusal to promote the petitioner not only as an adverse personnel action but also as a simultaneous, "embedded" act of retaliation. The respondent, even admitted, in its initial Response statement to the EEOC, "Mrs. Hill has been told that she has an intimidating personality, and the Fort Bend Ind. Sch. Dist. Cannot promote persons who have intimidating personalities." This direct statement in the record is the causal link to the retaliation for the continuous, retaliatory, refusal/failure to promote the petitioner prior

to June 10, 1998 continuing on into the charge filed period.

The second reason, this Court should grant this petition is because both the respondent's EEOC Response and also what the courts below have determined to be a nondiscriminatory explanation on the part of the respondent as to why it has continuously refused/failed signals pretext, retaliation, and an embedded issue of gender, which is racially tainted and racially codes/profiles and stereotypically and subjectively assigns a difficult, hard to get along with "intimidating personality type," particularly, to an African American female who is self assured, competent, astute, verbally articulate, and who carries herself with a certain dignity, seriousness, no nonsense manner, and seeks answers to questions via verbal or written content that are either undemocratic, unethical, or illegal, and/or not in the best interest of her life's work/profession or the job or task to which she ahs been assigned or endeavors to do. This sinister dual-twin issue embedded within the gender issue, as a whole, is one which is grossly missed and overlooked in the courts regarding a Black female in the workplace; she runs a double risk of the possibility of suffering discrimination and/or having discrimination perpetuated upon her due to gender by males of any race or color, and, yes, even, by **other females** who are non-Black which tends to be racially tainted accompanied by a lack of trust and misunderstanding due to a type of cultural dissonance. Going one step farther into a sensitive area, in plain English, carrying over from the days of slavery, if a "Black person" appeared too confident, too self-assured, too well spoken, too educated, they were viewed with distrust and distaste as "Uppity" "Putting on airs" and thinking that they were equal with White folks, and not knowing their places. Even, other Blacks would caution and remind this so called "Uppity Black person" about appearing too uppity and not knowing their places. So does the petitioner really have

an intimidating personality, or is she difficult to get along with, or does she really have poor interpersonal skills? This issue has to be scaffolded by the Fourteenth Amendment to the Constitution and equal protection, and due process, therein, and the pursuit of liberty for the petitioner to live her life and be who she is without fear of being continuously punished and deprived of a promotion for appearing too uppity and thinking she is equal to White Folks. This embedded issue without the generalized gender issue of Title VII is very complex; and, Title VII does not adequately address the "Black female's gender issue within the holistic gender issue" under Title VII.

The third reason this court should grant this petition is because the Court of Appeals erred in its analysis fo the record in recognizing direct and circumstantial evidence as matters for the jury and by misapplying incorrect legal standards. While ackowledging that the record reflected a prima facie on race and age; and, also while acknowledging via affidavits given by the petitioner's coworkers that the petitioner was a good teacher and brought out the best in her students, particularly, in the area reading; the Court of Appeals, failed to discern and/or either ignored the incongruency of the direct evidence exhibited by the direct statements made by the petitioner's co-workers in their affidavits disputed the circumstantial evidence presented via affidavits by the **same individuals (persons who were White and/or Black male who was younger than the petitioner by 24 or 25 years who had been promoted over the petitioner from the Cohort Classes with less experience, less education/qualifications, less experience, and no proven background of having the ability to bring out the best in students and were now her supervisors)** who were subjects of the petitioner's discrimination complaints. This created circumstantial evidence and on its face was sufficient

evidence to undermine the discriminatory explanation offered by the respondent. Yet, still, and simultaneously, the courts below ignored and/or excluded direct evidence and circumstantial evidence in the record which raised disputes/jury issues regarding the respondent had continuously failed/refused to promote the petitioner. Additionally, in doing so, the courts below demonstrated that they were inappropriately viewing/weighing evidence more favorable to the moving party than to the non-moving party as dictated by Federal Rule of Civil Procedure 50, which also mirrors Federal Rule of Civil Procedure 56. Reeves v. Sanderson Plumbing Prods. Inc. 530 U.S. 133, 150 (2000) Blow v. San Antonio, 236 F.3d 930, 936 (5th Cir. 2001).

The fourth reason this Court should grant this petition is because the direct evidence in the record, which was excluded or ignored by the courts below was not evaluated by the correct legal standard. The petitioner's own affidavit precluded summary judgment because it presented a genuine issue of material fact of the discrimination claims outline in her discrimination complaint. The petitioner's affidavit which included **"quoted direct statements" exemplifying the discrimination suffered; and, this was enough/sufficient, in the context of Title VII, on its face to raise jury issues. The petitioner's affidavit** should not have been considered as "subjective beliefs". "In the context of Title VII, direct evidence includes any statement or written document showing a discriminatory motive on its face. Portis v. First Nat'l, 34 F.ed 325, 328, 329 (5th Cir. 1994) 34 F.3d at 329. McDonnell Douglas should have been by passed, in the instance of direct evidence presented a factual issue for the jury; McDonnell Douglas Test inappropriate standard for determining direct evidence. See Trans World Airlines, Inc. v. Thurston, 469 U.S. 111, 121 (1985) ("McDonnell Douglas Test is inapplicable where the plaintiff presents direct

evidence of discrimination."); Portis, 34 F.3d at 328 (same); both are cited in Fierros v. Texas Department of Health (5th Cir. 2001).

The fifth reason this Court should grant this petition is because in examining the petitioner's retaliation claims and hostile work environment, the courts below erred by not applying the proper legal standard congruent to causation; and, even, if assuming that the petitioner had presented only circumstantial evidence and thus the McDonnell Douglas framework applied, petitioner would have still raised a factual issue precluding summary judgment. Thus, based upon the aforementioned, gives cause for this Court should grant the petitioner's request for a Petition is because the courts below abused their discretion by disregarding a prima facie case, combined with sufficient evidence to find that the employer's asserted justification is false, permitted the courts below to not concluded that the respondent unlawfully discriminated.

This sixth reason this Court should grant this petition is because of the many **unresolved issues raising jury questions** in this Title VII case regarding the following: **Disparate** impact created by the respondent's practice of **au jus segregation, "special treatment"** in the essence of a particular employment **"pattern practice"** giving favoring opportunity to one group and foreclosing opportunity for another group" emerging as in the example of the escalated hiring/promotional opportunity for applicant in the Superintendent's' Cohort classes. Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978) citings Griggs v. Duke Power and Teamster v. United States, 431 U.S. 324 (1977). **And, also, last but not least the document, which misrepresents ethnic/racial balance of administrative positions in which, the court of appeals referred to as "compelling statistical evidence."** The courts below abused their discretion

concerning the aforementioned disputes; it was impermissible for these disputes suppressed n this Title VII case by not allowing them to go forward to the jury. Even if race and/or age would be a proportionate representation in the Fort Bend Ind. Sch. Dist. It is clear beyond cavil that the obligation imposed by Title VII is to provide an equal opportunity for each applicant regardless of race, without regard to whether members of the applicant's race are already proportionately represented in the workplace. Albermarle Paper Co. v. Moody Evidence that the work force was racially balance while not wholly irrelevant, "was not" to conclusively demonstrate that (the employer's actions were not discriminatorily motivated"); this petition, particularly needs to be granted because in concluding that these circumstances so overwhelmed the evidence-favoring petitioner that no rational trier of fact could have found that the petitioner was not promoted because of her race and age as well as retaliation, the Court of Appeals for the Fifth Circuit impermissibly substituted its judgment concerning the weight of the evidence for the jury's. Reeves v. Sanderson Plumbing, Inc., 530 U.S. 133, 150(2000).

The seventh reason this Court should grant this petition is because the Court of Appeals for the Fifth Circuit applied contradictive legal rulings in conflict with its own court, other United States Court of Appeals, and the Supreme Court. The Courts of Appeals applied legal rulings which conflicted with, in reviewing the record, the light most favorable to the nonmoving party as dictated by Rule 50 which mirrors Rules 56 in Reeves v. Sanderson Plumbing Prods., 530 U.S. 133, 150 (2000) and Blow v. San Antonio, 236 F.3d (5th Circ. 2001). The Court of Appeals made legal ruling in conflict with Furnco Construction Corp., v. Waters, 438 U.S. 567 (1978) as cited in Reeves v. Sanderson Plumbing Prod. Inc. 530 U.S. 133, 150(2000) when concluding that the

appearance of statistical data depicting racial balance in promotions so overwhelmed the evidence favoring the petitioner that no rational trier of fact could have found that the petitioner was not promoted because of her race and age; the Court of Appeals impermissibly substituted its judgment concerning the weight of the evidence for the jury's. The Court of Appeals made legal rulings, which conflicted with decisions made by its own court in discerning causal link to retaliation as in Evans v. City of Houston and "but for" retaliation as in Long v. Eastfield Coll., 88 F.3d 300, 304 5th Cir. 1995). The Court of Appeals made legal rulings in conflict with decisions in its own court's cases as in Portis v. First Nat'l, 34 F.3d 325, 328 (5th Cir. 1994) for determining what constitutes direct evidence; petitioner's affidavit alone in the record precluded summary judgment because it presented a genuine issue of material fact as decided in Vance v. Union Planters Corp., 209 f.d 438, 442 (5th Cir. 2000);p this decision conflicted with legal rulings concerning the petitioner's evidence (affidavit of petitioner) in the record concerning Rule 50; even if a Title VII plaintiff was the sole witness to offer testimony about discriminatory employer's statements, it would warrant taking the case to the jury. The Court of Appeals made legal rulings in conflict with decisions in its own court in reviewing the record in the light most favorable to the nonmoving party's evidence is in conflict with Fierros v. Texas Department of Health (5th Cir. 2001) and Evans v. City of Bishop, 238 F.3d 586, 589 (5th Cir. 2000). The Court of Appeals made legal ruling in conflict with other court of appeals for determining the continuing violation doctrine as in Morgan v. National Railroad Passenger Corporation 99-15374 (9th Cir. 2000); Draper v. Coeur Rochester, Inc. 147 F.3d 1104, 117 (9th Cir.); Fielder v. UAL Corp., 218F.3d 973 (9th Cir. 2000) petition for cert. pending No. 00-1397 (filed Mar. 7, 2001). The Court of Appeals made legal ruling which conflict with the Supreme

Court and the United States Court of Appeals for the Ninth Circuit in determining a harassing, hostile work via disparate treatment conflicting with Burlington Indus., Inc. v. Ellerth, 524 U.S. 742 (1998); Faragher v. City of Boca Raton, 524 U.S. 775 (1998); Morgan v. National Railroad Passenger Corporation 99-15374 (9th Cir. 2000).

The eight reason this Court should grant a petition is because the courts below abused their discretion by allowing the respondent to violate Civil Rule of Procedure 37 which impeded/suppressed the petitioner's opportunity to make a comparative analysis of her credentials with those persons promoted over her to exhibit the disparity of the credentials of those person who received the promoted over her.

The ninth reason this Court should grant this petitioner is because the respondents were not entitled to a summary judgment and keeping this case Title VII out of the hands of a Jury; neither are the respondents entitled any money from the petitioner. This is not a frivolous lawsuit! The courts below abused their discretion by rendering a summary judgment in favor of the respondent and ordering court cost to be paid by petitioner when there were no briefs filed at the district court level because the case never went to a jury. The petitioner did pay $100.00 to the respondent for the cost of filing briefs in the Court of Appeals. The district court level below ordered that the petitioner pay $1,752.41 for the cost of the respondent deposing the petitioner. Since there was no actual court cost at the district court level because the case never went to the jury, the respondent should bear their own cost. The final reason this Court should grant this petition is because of the public issue at stake: How is it that a experienced, competent, qualified teacher who brings out the best in students cannot receive a promotion in a public educational institution which has the public's trust and who

has purported to the public the commitment to hire and promote persons who have demonstrated excellent results in their capability to educate the public's children in an excellent manner for the benefit of its children, yet, the petitioner was continuously deprived of obtaining an opportunity to be promoted and become a leader in the business of public education in her own place of employment where she has impacted favorably and made a significant contribution to the commitment, goals, ideals, and the public trust enjoyed by the Fort Bend Ind. Sch. Dist. The petitioner exhibited excellent job performance in meeting her commitment to the public by educating the public's children to bring out the best in them to become literate, competent students themselves, their families, their communities, the State, The United States of America, and the World. But yet, less experienced, less qualified, and persons with no proven track record for bringing out the best in the public's children are continuously promoted over her. It is so incredulous that the Fort Bend Ind. Sch. Dist. Would offer up subjective statements that the petitioner, "was not the most qualified person on the job" which on its face is a nonsensical statement which is simultaneously anti-educational. Since when did it become unfashionable for experience to matter or the ability to do the job well insignificant? Well, this exact sentiment is reflected in the following statement offered by the respondent------ "Just because a person has been teaching a long time and has experience doesn't mean they are the best candidate to be promoted" or that the petitioner "has poor interpersonal skills;" anyone who knows anything about children are adept determines of interpersonal skills; and, if the petitioner **truly** had poor interpersonal skills, she would be unable to achieve bringing out the best in her students. Therefore, the courts below erred in their acceptance that the respondent had given a legitimate nondiscriminatory explanation as to why they continued to refuse/failed to promote the petitioner; and in

doing so, the courts below denied the petitioner an opportunity for a jury trial in her Title VII case. In the words, of Thomas Jefferson, "The anchor of all our liberties is a jury trial." To be denied a jury trial in this case is indeed a public concern. For the respondent to say that the petitioner has a difficult personality and make an anti-educational statement in subjectively that the Petitioner was not the most qualified for the job in spite of her excellent job performance, but she has continued not to be promoted is indeed a public concern.

Conclusion

The judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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